

## **SECOND DIVISION**

**[ G.R. No. 100319, August 08, 1996 ]**

**THE UNION INSURANCE SOCIETY OF CANTON, PETITIONER, VS.  
THE COURT OF APPEALS AND FAR EAST CHEMCO LEASING AND  
FINANCING CORPORATION, RESPONDENTS.**

### **D E C I S I O N**

**TORRES, JR., J.:**

This petition for review on certiorari seeks to reverse and set aside the decision dated March 12, 1991 of the Court of Appeals<sup>[1]</sup> in CA-G.R. CV No. 16981, which reversed the decision dated January 2, 1985 of the Regional Trial Court of Makati, Branch CXLIV in Civil Case No. 6487.

The undisputed facts as stated by the trial court and reproduced by the respondent Court of Appeals in its decision are as follows:

"This is an action filed by the plaintiff The Union Insurance Society of Canton, Ltd., a foreign corporation duly authorized to do business in the Philippines, against the defendant The Far East Chemco Leasing Corporation, a domestic corporation organized in accordance with the laws of the Philippines. The complaint prays that the defendant be ordered to return to the plaintiff certain vessels or their value plus damages and attorney's fees.

"The record discloses that upon being served summons on March 5, 1984, the defendant, through counsel, filed a motion for extension of time to file its answer which was granted by the Court giving the defendant an extension of 15 days from March 20, 1984 within which to file its answer. However, despite the said extension it prayed for and granted by the Court, the defendant failed to file an answer thereby prompting the plaintiff to move that the defendant be declared in default which the Court granted and at the same time authorizing the plaintiff to present its evidence ex parte.

"Subsequently, the defendant filed a motion to set aside the order of default and the plaintiff filed an opposition thereto. However, at the scheduled hearing of the said motion on June 1, 1984, the defendant's counsel instead manifested that the defendant will submit a proposal for an amicable settlement of the case with the plaintiff for which reason the hearing of the defendant's motion was reset to June 29, 1984, at 2:00 p.m., but when the motion was called for hearing the defendant's counsel failed to appear despite previous notice in open Court. Having found the grounds of the said motion unmeritorious, the Court resolved to deny the same.

"It appears that on March 11, 1976, the Union Insurance Society of Canton, Ltd., through its general agent, Ker & Co., as insurer subrogee of Litton Mills, Inc. (Consignee), filed a complaint for damages with the former Court of First Instance of Manila docketed therein as Civil Case No. 101598 against the Philippine Tugs, Inc., a corporation engaged in carrying goods on lighters from vessels anchored in Manila Bay to any part of the Philippines. On July 19, 1977, the said Court rendered judgment in favor of the plaintiff and against Philippine Tugs, Inc. ordering the latter to reimburse to the plaintiff as subrogee the amount of P1,849,044.23 with legal interest from the date of the filing of the complaint until full payment thereof plus costs. For a better understanding of the facts of that case and what gave rise to the said action and the award of damages to the plaintiff, pertinent excerpts of the said Court's decision (Exh. A) are quoted as follows:

'On September 5, 1975, the defendant entered into a contract with Litton Mills, Inc. for the former to lighter the cargo of said Litton Mills Inc. consisting of 2,045 bales of compressed cotton from SS "Pres. Magsaysay," which was then moored at the Manila South Harbor, and its destination was Magallanes Drive. In accordance with this agreement, the defendant dispatched its barge, the Ben Michael II to the Manila South Harbor and received from the SS "Pres. Magsaysay" 2,045 bales of compressed cotton for delivery to Litton Mills, Inc. This shipment of 2,045 bales of cotton was insured by Litton Mills, Inc. with the plaintiffs. On October 14, 1975, Litton Mills Inc. sent four formal claims to plaintiff, Ker & Co. Ltd. (Exhibits "E" to "E-3"), informing the latter that of the total cargo of 2,045 bales, only 2,036 bales were delivered and there was a shortage of nine bales and that out of the 2,036 bales, 521 bales were totally damaged by seawater and stains and therefore, no longer usable. That the total value of the lost and damaged bales of cotton was P1,849,044.23. Similar demands were made by Litton Mills Inc. to the defendant, Exhibits "F-3". When the defendant refused to pay the alleged damaged, the plaintiffs paid to Litton Mills, Inc. the total demand of P1,849,044.23 (Exhibits "H" to "H-3") and the defendant was accordingly advised of this payment, Exhibit "I" to "I-3". On February 25, 1976, the plaintiff, thru its counsel, wrote a letter to the defendant, (Exhibit "M") informing the latter that they have paid Litton Mills, Inc. the amount of P1,849,044.23, at the same time as the subrogee, seeking reimbursement of the amount for the reason that the shortage and damage was defendant's responsibility. On March 2, 1976, the defendant, thru its counsel (Exhibit "6"), answered, totally denying responsibility of the ordinary claims for loss or damage to the cargo. In other words, the plaintiff claims that the defendant actually received 2,045 bales of cotton from the SS "Pres. Magsaysay," but it only delivered 2,036 bales to Litton Mills, Inc., thus having a shortage of nine bales, and further, out of the 2,036 bales, 521 bales were in bad order condition because they were damaged by seawater when they were in the possession of said defendant. That by virtue of the contract between Litton Mills, Inc. and the latter is liable as a common carrier as provided for under Article 1735, 1736 and 1737 of the New Civil Code.'

"The dispositive portion of the decision of the CFI of Manila presided over by Hon. Alfredo C. Florendo reads:

'WHEREFORE, in view of the foregoing considerations, the Court hereby renders judgment in favor of the plaintiff and against the defendant, and the latter is hereby ordered to reimburse to the plaintiff, as subrogee, the amount of ONE MILLION EIGHT HUNDRED FORTY NINE THOUSAND FORTY FOUR PESOS & 23/100 (P1,849,044.23), with legal interest from the date of full payment and to pay the costs.'

"The Philippine Tugs, Inc. appealed the said decision to the then Court of Appeals docketed therein as CA-G.R. No. 63144-R, but it was affirmed in toto by the Court of Appeals in the latter's decision promulgated on September 29, 1982 (Exh. B). x x x"

"The evidence on record consisting of the articles of incorporation and other documents from the Securities and Exchange Commission disclose that Angel T. Rodriguez was the Vice-President and Treasurer and at the same time a director of the Philippine Tugs, Inc. while Julian R. Cordero and Francisco Y. Wong were also directors (Exh. C), and all the three of them were the controlling stockholders of the said corporation it appearing that of the P60,000.00 subscribed capital stock (60,000 shares at the par value of P1.00 per share), they owned P15,000.00, P12,000.00 and P13,000.00 worth of stock, respectively, or 40,000 of 60,000 shares or roughly 67% of the subscribed capital stock (Exhs. C, C-1 to C-8).

"These three persons likewise appear to be the controlling stockholders of another corporation, the Valenzuela Watercraft Corporation, it being also disclosed by the documents on file with the SEC that Julian R. Cordero was its president, Angel T. Rodriguez, its Vice-President, and Francisco Y. Wong, its treasurer-secretary (Exh. D-2); and of the 2,000 subscribed capital stock worth P200,000.00 (at the par value of P100.00 per share) Angel T. Rodriguez owned 500 shares worth P50,000.00; Julian R. Cordero, 400 shares worth P40,000.00; and Francisco Y. Wong, 700 shares worth P70,000.00 - a total of 1,600 shares worth P160,000.00 - or 80% of its subscribed capital stock (Exhs. D, D-1 to D-12).

"In the meantime, during the pendency of the said action in the CFI of Manila, the Philippine Tugs, Inc., through the said Angel T. Rodriguez, Julian R. Cordero and Francisco Y. Wong who as aforesaid altogether owned 67% of the subscribed capital stock of the said corporation, transferred a number of its vessels including its tugboat 'M/T Legionaire,' formerly known as 'Sea Rover,' its tugboat 'M/T Centurion,' formerly known as 'Good Hope,' and the barge 'Pencar 1311,' formerly known as 'Ben Michael,' as shown by a Deed of Absolute Sale dated September 30, 1976 (Exh. G), to the said Valenzuela Watercraft Corporation 80% of the subscribed capital stock of which as aforesaid was also owned by the aforesaid stockholders of the Philippine Tugs, Inc.

"Soon after the promulgation of the said judgment by the CFI of Manila